

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

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U.S. DISTRICT COURT

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TEXAS EASTERN

DUANE L. MCEACHERN,

Plaintiff,

v.

ENRON CORP., THE NORTHERN TRUST
COMPANY, and ARTHUR ANDERSEN,
LLP,

Defendants.

CIVIL ACTION NO. 501 C V 310

CLASS ACTION COMPLAINT

1. Plaintiff, by his undersigned attorneys for his Class Action Complaint, alleges upon personal knowledge as to himself and his own acts, and upon information and belief (based upon the investigation of their counsel) as to all other matters, as to which allegations he believes substantial evidentiary support will exist after a reasonable opportunity for further investigation and discovery as follows:

NATURE OF THE ACTION

2. Plaintiff brings this action as a Class Action pursuant to Rules 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons who are or were participants or beneficiaries of the Enron Corp. Savings Plan (the "Savings Plan") during the period from January 20, 1998 through November 20, 2001. Excluded from the Class is any member of Enron's senior management.

3. Beginning on January 20, 1998, when Enron reported its financial results for the year ending December 31, 1997, the Company systematically misrepresented its reported financial results by entering into elaborate partnerships with related parties to obscure its actual poor financial results.

4. Throughout the Class Period, Enron reported “strong” or “record” financial results for each successive year through 2000, but those results were only attained through the use of accounting trickery.

5. Unaware of the improper accounting and financial reporting underway at Enron, the market price of Enron stock continued to rise – trading as high as \$90.00 per share in December of 2000. Members of the Class, having no knowledge of the accounting improprieties, and further encouraged by the public statements of officers of Enron regarding the financial strength of the Company, continued to add more Enron stock to their Savings Plan accounts at prices typically between \$50 and \$90 per share.

6. On October 17, 2001, Defendants “locked down”¹ all assets in the Enron Corp. Savings Plan – including all of the participants’ investments in Enron stock. Because of this maneuvering by Defendants, the participants were powerless to sell their shares of Enron.

7. On November 8, 2001, Enron announced that all of its reported financial results since 1997 were materially false and misleading. The Company announced the highly unusual step of restating of all of the Company’s annual financial statements for the previous four years – essentially admitting that the statements were materially misleading when they were issued.

8. The stock market reacted severely to Enron’s disastrous news, casing Enron stock to fall below \$9.00 per share immediately after the November 8, 2001 announcement, to sink as low as \$6.99 per share on November 19, 2001. The participants of the Savings Plan, powerless to sell their Enron shares because of the “lock down,” were forced to watch in dismay as their investment in Enron stock plummeted.

¹ “Locked down” is a term used to signify that Enron cut off Plan participants’ access to their 401k accounts so that participants could not execute any trades involving the securities in the account.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1) and personal jurisdiction over the Defendants pursuant to Fed R. Civ. P. 4.

10. Venue is properly laid in this district pursuant to Employee Retirement Insurance Security Act "ERISA" § 502(e)(2) (29 U.S.C. § 1132(e)(2)) because some or all of the fiduciary breaches for which relief is sought occurred in this district, and one or more of the Defendants may be found in this district.

PARTIES

11. Plaintiff Duane L. Mceachern is a resident of Kilgore, Texas. Plaintiff Mceachern was an employee of Enron and is a current participant in the Enron Corp. Savings Plan.

12. Defendant Enron Corp. ("Enron") is an Oregon corporation with its headquarters in Houston, Texas. Enron Corp. provides products and services related to natural gas, electricity and communications to wholesale and retail customers. Enron's operations are conducted through its subsidiaries and affiliates, which are principally engaged in: the transportation of natural gas through pipelines to markets throughout the United States; the generation, transmission and distribution of electricity to markets in the northwestern United States; the marketing of natural gas, electricity and other commodities and related risk management and finance services worldwide; the development, construction and operation of power plants, pipelines and other energy related assets worldwide; the delivery and management of energy commodities and capabilities to end-use retail customers in the industrial and commercial business sectors; and the development of an intelligent network platform to provide bandwidth management services and the delivery of high bandwidth communication applications. Defendant Enron does business within this district.

13. Defendant The Northern Trust Company ("Northern Trust") is a multi-bank holding company headquartered in Chicago with approximately \$35 billion in banking assets and

over \$1.6 trillion in trust assets. Northern Trust's assets under management are over \$300 billion, ranking Northern Trust among the 20 largest U.S. money managers. Over two-thirds of corporate revenue is derived from fees, the majority of which are from fiduciary, asset custody, and investment management services. Defendant Northern Trust does business within this district.

14. Defendant Arthur Andersen, LLP, ("Andersen") served at all times relevant hereto as the independent auditor of Enron's financial statements for fiscal years ending December 31, 1997, 1998, 1999 and 2000. Additionally, Andersen is the independent auditor of Defendant Northern Trust. Defendant Andersen does business within this district. Andersen was also responsible for auditing the value of the plan and providing required financial data in reports filed with the various regulatory agencies.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action as a Class Action pursuant to Rules 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons who are or were participants or beneficiaries of the Enron Corp. Savings Plan during the period from January 20, 1998 through November 20, 2001. Excluded from the Class is any member of Enron's senior management.

16. The Class consists of thousands of persons located throughout the United States, thus, the members of the Class are so numerous that joinder of all Class members in impracticable. The exact number of Class members is not presently known to Plaintiff, but can readily be determined by appropriate discovery. It is estimated that over 50% of Enron's 21,000 employees participated in the Plan.

17. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class actions and ERISA litigation. Plaintiff has no interests that are adverse or antagonistic to those of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to individually seek redress for the wrongful conduct alleged herein.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether ERISA was violated by Defendants' acts and omissions, as alleged herein;
- (b) Whether Defendants breached fiduciary duties owed to Plaintiff and the members of the Class by failing to act prudently and solely in the interest of the Enron Corp. Savings Plan participants and beneficiaries; and
- (c) Whether Plaintiff and the members of the Class have sustained injury by reason of Defendant's actions and omissions.

20. Plaintiff envisions no difficulty in the management of this litigation as a Class Action.

ADMINISTRATION OF THE SAVINGS PLAN

21. The Savings Plan was an eligible individual account plan within the meaning of ERISA § 407 (29 U.S.C. § 1107) and was also a qualified cash or deferred arrangement within the meaning of IRC § 401(k) (26 U.S.C. § 401(k)).

22. At all relevant times, the participants and beneficiaries of the Savings Plan were presented with alternative investments represented to them as suitable for their retirement contributions. At all relevant times, one of the alternative investments presented to the participants and beneficiaries of the Savings Plan was Enron stock.

THE DEFENDANTS HAD FIDUCIARY DUTY TO THE CLASS

23. During the Class Period, the Defendants had discretionary authority respecting management of the Savings Plan and/or the management or disposition of the Savings Plan's assets and had discretionary authority or responsibility for the administration of the Savings Plan.

24. During the Class Period, all of the Defendants acted as fiduciaries of the Savings Plan pursuant to ERISA § 3(21)(A) (29 U.S.C. § 1002(21)(A)) and the law interpreting that section.

25. ERISA requires every plan to provide for one or more named fiduciaries, who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1) (29 U.S.C. § 1102(a)(1)). Instead of delegating fiduciary responsibility for the Savings Plan to external service providers, the Company chose to comply with the requirement of section 402(a)(1) by internalizing the fiduciary function.

26. During the Class Period, the Company was designated as the Plan Administrator of the Enron Corp. Savings Plan, thereby making itself an ERISA fiduciary pursuant to ERISA § 402(a)(1).

27. ERISA also treats as a fiduciary not only persons explicitly named as fiduciaries under § 402(a)(1), but persons whose behavior entails the conduct of fiduciary functions. ERISA § 3(21)(A)(i) (29 U.S.C. § 1102(21)(A)(i) of ERISA makes a person (including a judicial person such as the Company) a fiduciary "to the extent ... he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets...." During the Class Period, the Defendants performed fiduciary functions under this standard, and thereby also acted as fiduciaries under ERISA.

28. An employer also acts in a fiduciary capacity under ERISA when an employer misleads employees about the character and prospects of the company for the purpose of

affecting the employees' ERISA plan elections. During the Class Period, the Company's communications with Plan participants included material misrepresentations and omissions to induce them to continue to invest in and maintain investments in the Company's shares in the Plan and to accept at face value investments in the Company's shares with the employer match contributions. The Company thereby also acted as a fiduciary under ERISA.

DEFENDANTS BREACHED THEIR FIDUCIARY DUTIES TO THE CLASS

29. ERISA section 404(a)(1))(A) imposes on a plan fiduciary a duty of loyalty – that is, a duty to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of ... providing benefits to participants and their beneficiaries....” Section 404(a)(1))(B) also imposes on a plan fiduciary a duty of prudence – that is, a duty to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims....”

30. A plan fiduciary's duties of loyalty and prudence include a duty to disclose and inform. This duty entails: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries. This duty to disclose and inform recognizes the disparity that may exist, and in this case did exist, between the training and knowledge of the fiduciaries, on the one hand, and the participants and beneficiaries, on the other. In a plan with various funds available for investment, this duty to inform and disclose also includes: (1) the duty to impart to plan participants material information of which the fiduciary has or should have knowledge that is sufficient to apprise the average plan participant of the risks associated with investing in any particular fund; and (2) the duty not to make material misrepresentations.

31. During the Class Period and before, the Defendants breached their fiduciary duties to disclose and inform with respect to the Savings Plan' use of employer stock as a plan investment. From the beginning of the Class Period and before, any investment in employer stock in the Savings Plan was an undiversified investment in a single company's stock whose public price was based on expectations of continued rapid growth. As a result, any such investment carried with it an inherently high degree of risk. These inherent risks made the Defendants' duty to provide complete and accurate information about investing in Company stock in the Savings Plan even more important than would otherwise be the case. Rather than providing complete and accurate information to the Savings Plan' participants and beneficiaries regarding the risks of investing in the Company stock fund in the Savings Plan, Defendants withheld and concealed material information during the Class Period and before as set forth above, and instead actively misled the participants and beneficiaries of the Savings Plan about the Company's earnings prospects and business condition, thereby encouraging participants and beneficiaries of the Savings Plan to continue to make and to maintain substantial investments in Company stock in the Savings Plan.

32. A fiduciary's duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and continually to monitor, the merits of the investment alternatives in the Savings Plan, including employer securities, to ensure that each investment is a suitable option for the Plan. From the inception of the Class Period, Defendants breached this duty of investigation and monitoring with respect to the Company stock fund. During the Class Period, none of the Defendants could have reasonably made a determination that the Company stock fund was a suitable investment for the Savings Plan. During the Class Period, the Company stock was an unsuitable investment option for the Savings Plan.

33. The fiduciary duty of loyalty also entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an

“eye single” to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

34. Defendants breached their duty to avoid conflicts of interests and to promptly resolve them when they occur by continuing to offer Company stock as a Plan investment option during the Class Period.

ENRON’S SCHEME TO ARTIFICIALLY INFLATE ITS STOCK PRICE THROUGH MANIPULATION OF ITS REPORTED FINANCIAL RESULTS

35. On January 20, 1998, Enron announced its operating results for the year ended December 31, 1997 over the PR Newswire. The Company reported net income of \$105 million for the year (\$0.32 per share). Enron’s Chairman and CEO, Kenneth Lay, commented that “[o]ur 1997 results reflected extremely strong operating performance in all of our business units, offset to a significant degree by a number of non-recurring charges . . . These charges allow us to clear the decks for future growth.” This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with Generally Accepted Accounting Standards (“GAAP”), as detailed more fully below.

36. On March 31, 1998, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 20, 1998 press release, and was false and misleading for the same reasons.

37. On January 19, 1999, Enron issued a press release over the PR Newswire announcing its earnings for the year ended December 31, 1998:

Enron Corp. (NYSE: ENE) announced today a 16 percent increase in 1998 earnings per diluted share to \$2.01 from \$1.74 in 1997. Corresponding net income increased 36 percent to \$698 million from \$515 million during the year.

* * *

"Across Enron, 1998 was an excellent year," said Kenneth L. Lay, Enron Corp. chairman and chief executive officer.

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with Generally Accepted Accounting Standards ("GAAP"), as detailed more fully below.

38. On March 31, 1999, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 19, 1999 press release, and was false and misleading for the same reasons.

39. On January 18, 2000, Enron issued a press release over the PR Newswire announcing its earnings for the year ended December 31, 1999:

HEADLINE: Enron Continues Strong Earnings Growth; Reports Fourth Quarter 1999 Earnings of \$0.31 Per Diluted Share

DATELINE: HOUSTON, Jan. 18

BODY:

Enron Corp. (NYSE: ENE) announced today very strong financial and operating results for the full year 1999, including:

- a 28 percent increase in revenues to \$40 billion;
- a 37 percent increase in net income to \$957 million;
- an 18 percent increase in earnings per diluted share to \$1.18

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with GAAP, as detailed more fully below.

40. On March 30, 2000, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 18, 2000 press release, and was false and misleading for the same reasons.

41. On January 22, 2001, Enron issued a press release over the PR Newswire announcing "record" earnings for the year ended December 31, 2000:

Enron Corp. (NYSE: ENE) announced today record financial and operating results for the full year 2000, including:

-- a 25 percent increase in earnings per diluted share to \$1.47;

-- a 32 percent increase in net income to \$1.3 billion;

* * *

"Our strong results reflect breakout performances in all of our operations," said Kenneth L. Lay, Enron's chairman and CEO.

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with GAAP, as detailed more fully below.

42. On April 2, 2001, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 22, 2001 press release, and was false and misleading for the same reasons.

43. On October 17, 2001, Defendants "locked-down" the Savings Plan accounts, making it impossible for the members of the Class to roll their investments in Enron stock into other investments. Essentially, members of the Class were forced by Defendants to watch from the sidelines as their hard-earned retirement savings evaporated as a result of Defendants' misconduct. This lockdown was not lifted until November 14, 2001, several days after Enron announced that it was re-stating its financial statements for years ending December 31, 1997, 1998, 1999, 2000 and for the first two quarters of fiscal 2001.

44. On November 8, 2001, Enron announced over the PR Newswire that it would be forced to restate all of its reported financial results from 1997 through 2000 dramatically downward because the previously released financial information did not comply with GAAP:

Enron's current assessment indicates that the restatement will include a reduction to reported net income of approximately \$96 million in 1997, \$113 million in 1998, \$250 million in 1999 and \$132 million in 2000, increases of \$17 million for the first quarter of 2001 and \$5 million for the second quarter and a reduction of \$17 million for the third quarter of 2001.

This shocking news caused Enron's share price to collapse to under \$9.00, and to continue to fall as low as \$6.99 on November 19, 2001-- a loss of more than 90% from the class period high of \$90.75 per share. Plaintiff and the Class lost millions of dollars as a result of Defendants' misconduct.

CAUSATION OF LOSSES

45. The Savings Plan suffered a loss, and Plaintiff and the other class members were damaged, because substantial assets in the Savings Plan were invested in Enron stock during the Class Period in violation of Defendants' fiduciary duties. As fiduciaries, Defendants were responsible for the prudence of investments in the Savings Plan during the Class Period unless participants in the Savings Plan themselves exercised effective and informed control over the assets in the Savings Plan in their individual accounts pursuant to ERISA section 404(c) and the regulations promulgated under it. Those provisions were not complied with here; instead of taking the necessary steps to ensure effective participant control by complete and accurate disclosure and regulatory compliance, Defendants did exactly the opposite. As a consequence, participants in the Savings Plan did not control the Savings Plan's assets that were invested in Enron stock, and Defendants remained entirely responsible for ensuring that such investments were and remained prudent. Defendants' liability to Plaintiff for damages stemming from imprudent Plan investments in Enron stock is, therefore, established upon proof that such investments were or became imprudent and resulted in losses in the value of the assets in the Savings Plan during the Class Period, without regard to whether or not the participants relied upon statements, acts, or omissions of Defendants.

46. Plaintiff further contends that the Savings Plan suffered a loss, and Plaintiff and the other class members were damaged, by Defendants' above-described conduct during the Class Period because Defendants' materially deceptive statements, acts and omission were fundamentally designed to deceive Plaintiff and the other class members about the prudence of making and maintaining investments in the Enron Corp. Savings Plan. Where a breach of fiduciary duty consists of, or includes, misrepresentations and omissions material to a decision by a reasonable participant that results in harm to the participant, the participant is presumed as a matter of law to have relied upon such misrepresentations and omissions to his or her detriment. Here, Defendants' above-described statements, acts and omissions constituted misrepresentations and omissions that were fundamentally deceptive concerning the prudence of investments in the Enron Corp. Savings Plan and were material to any reasonable person's decision about whether or not to invest or maintain any part of their plan assets in the Enron Corp. Savings Plan during the Class Period. Plaintiff and the other class members are, therefore, presumed to have relied to their detriment on Defendants' deceptive statements, acts and omissions.

47. Plaintiff further contends that the Savings Plan suffered a loss, and Plaintiff and the other class members were damaged, by Defendants' above-described conduct during the Class Period because that conduct fundamentally deceived Plaintiff and the other class members about the prudence of making and maintaining investments in the Enron Corp. Savings Plan, and that, in making and maintaining investments in the Enron Corp. Savings Plan, Plaintiff and the other Class members relied to their detriment upon Defendants' materially deceptive statements, acts and omissions.

COUNT I
FOR VIOLATIONS OF ERISA
(AGAINST ALL DEFENDANTS)

48. ERISA § 502(a)(2) (29 U.S.C. § 1132(a)(2)) authorizes a plan participant to bring a civil action for appropriate relief under section 409 (29 U.S.C. § 1109). Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries .

... to make good to such plan any losses to the plan . . . " Section 409 also authorizes "such other equitable or remedial relief as the Court may deem appropriate . . . "

49. With respect to the calculation of losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the plan would not have made or maintained their investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the plan's assets to what they would have been if the plan had been properly administered.

50. Defendants' misconduct, as outlined above, constituted breaches of fiduciary duty and violations of ERISA, resulting in damages to Plaintiff and the Class.

PRAYER FOR RELIEF

51. WHEREFORE, Plaintiff prays for relief as follows:

A. That this Court certify this action as a class action under Rule 23(b)(1), 23(b)(2) and 23(b)(3);

B. That this Court declare that Defendants have violated the duties, responsibilities and obligations imposed upon it as a fiduciary by ERISA;

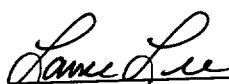
C. That this Court order Defendants to restore to the Enron Corp. Savings Plan on behalf of each member of the Class the amount of overpayment made for the purchase of Enron stock, plus interest;

D. That this Court award to Plaintiff reasonable costs and attorneys' fees; and

E. That this Court grant such other relief as may be just and proper.

DATED this 20th day of November, 2001.

RESPECTFULLY SUBMITTED

By: 
Damon Young
Texas Bar No. 22176700

Lance Lee
Texas Bar No. 24004762
YOUNG PICKETT & LEE
4122 Texas Boulevard
Texarkana, TX 77503
Phone: (870) 774-3206
Fax: (903) 792-5098

CAULEY GELLER BOWMAN & COATES, LLP
Steven E. Cauley
Curtis L. Bowman
W. Todd Ver Weire
Randall K. Pulliam
P.O. Box 25438
Little Rock, AR 72221-5438
Phone: (501) 312-8500
Fax: (501) 312-8505

ATTORNEYS FOR PLAINTIFF